

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DAVIS/BAKER/GAULDING,
Minors.

UNPUBLISHED

January 16, 2014

No. 316527

Wayne Circuit Court

Family Division

LC No. 11-500336-NA

Before: STEPHENS, P.J., and M. J. KELLY and RIORDAN, JJ.

PER CURIAM.

Respondent L. Davis appeals as of right from the trial court's order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

Respondent argues that the trial court erred in finding that the evidence supported a statutory basis for termination, and in finding that termination of her parental rights was in the children's best interests. We disagree.

If termination of parental rights is sought, the petitioner bears the burden of establishing a statutory ground for termination in MCL 712A.19b(3) by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 351; 612 NW2d 407 (2000). "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). Whether termination is in a child's best interests is determined by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). A trial court's factual findings as well as its ultimate determination that a statutory ground for termination has been proven by clear and convincing evidence are reviewed for clear error. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). A trial court's decision regarding a child's best interests is also reviewed for clear error. *In re Trejo*, 462 Mich at 356-357. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *In re Mason*, 486 Mich at 152. To be clearly erroneous, a decision must be "more than just maybe or probably wrong." *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009) (citation omitted). Regard is given to the special opportunity of the trial court to judge the credibility of the witnesses who appear before it. *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011).

The trial court terminated respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), which permit termination under the following circumstances:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The initial dispositional order was entered on June 20, 2011, well more than 182 days before the termination hearing in April 2013. The principal condition that led to the children's adjudication as court wards was respondent's long history of substance abuse. In April 2011, respondent, then age 30, admitted that she had been using marijuana since age 13, had been drinking and using other pills since she was "a teenager," and had been using crack cocaine since age 26. Respondent's treatment plan required her to complete parenting classes, attend individual counseling, participate in inpatient and outpatient substance abuse services, submit to random drug screens, participate in family counseling, maintain suitable housing and income, maintain contact with the assigned workers, and attend regular visits with her children. At the time of the termination hearing, respondent still had not been able to resolve her substance abuse issues. She completed an inpatient detoxification program at Light House in 2010, but she failed to complete two intensive outpatient programs, missed several scheduled drug screens, and continued to test positive for marijuana and cocaine. She admitted at the termination hearing that she still had a drug problem. The trial court did not clearly err in finding that the conditions that led to the adjudication continued to exist. Further, considering respondent's lengthy substance abuse history and her failure to benefit from substance abuse services, the trial court did not clearly err in finding that this condition was not reasonably likely to be rectified within a reasonable time considering the children's ages. Therefore, termination was warranted under § 19b(3)(c)(i).

The trial court also did not clearly err in finding that §§ 19b(3)(g) and (j) were both established by clear and convincing evidence. In addition to respondent's continuing substance abuse problems, the evidence showed that respondent failed to attend individual therapy, substance abuse therapy, domestic violence therapy, and family therapy, despite referrals for these services and being provided with bus tickets for transportation. She also missed several scheduled visits with her children, in large part because of her substance abuse issues. Although respondent completed parenting classes, the caseworker did not believe that she benefitted from the classes. Thus, the trial court did not clearly err in finding that respondent's continued drug use and dysfunctional behavior left her unable to properly care for the children and, considering respondent's lack of progress after almost two years of services, that she was not reasonably likely to be able to provide proper care and custody within a reasonable time. Further, considering respondent's unresolved substance abuse issues, it was reasonably likely that the children would be harmed if returned to respondent's home. Therefore, termination was warranted under §§ 19b(3)(g) and (j).

We also reject respondent's argument that the trial court erred in finding that termination of her parental rights was in the children's best interests, or that remand is required because the trial court's termination order is devoid of any specificity explaining why termination is in the children's best interests.

The court is required to state on the record *or* in writing its findings of fact and conclusions of law. MCR 3.977(I)(1); *In re Trejo*, 462 Mich at 355. "Brief, definite, and pertinent findings and conclusions on contested matters are sufficient." MCR 3.977(I)(1). The trial court stated in its written order "that termination of all parental rights as outlined is clearly in the children's best interests." This statement was preceded by the trial court's summary of the evidence, during which the court stated that respondent's "continuing drug use and dysfunctional behavior leave her unable to properly parent the children and it is highly likely that they will be neglected in the long term future if returned to her care." The court further specified that the children "continue to suffer the adverse consequences of [respondent's] dysfunctional behaviors, and after two years in limbo, they must be afforded the permanency, stability, and finality they need for proper growth and development." The court also observed that the children were "currently placed with a non-relative foster care provider who has provided a secure and stable home for the children and who is willing to adopt the children." These findings are sufficient to comply with MCR 3.977(I)(1). Further, they are not clearly erroneous.

The evidence showed that respondent did participate in and complete certain mandated requirements of her treatment plan, but she failed to demonstrate sufficient compliance with or benefit from the services specifically targeted to address the primary basis for the adjudication, her long-term substance abuse issues. She continued to use drugs and was incarcerated at times during the proceedings. She failed to submit to numerous drug screens. She failed to visit her children regularly, in large part because of her continued drug use. She continued to test positive for drugs. She failed to attend family therapy, individual therapy, substance abuse therapy, and domestic violence therapy. In light of this evidence, it was unlikely that the children could be returned to respondent's home within the foreseeable future, if at all. The children were in placement with a non-relative foster care provider who was willing to adopt all three of them and provide them with a secure and stable home, which respondent was incapable of providing.

Accordingly, the trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests. See *In re Frey*, 297 Mich App 242, 244; 824 NW2d 569 (2012).

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Michael J. Kelly
/s/ Michael J. Riordan